

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

INSTRUCTIONS:

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
32-CA-164766	11/23/2015

File an original of this charge with NLRB Regional Director in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT			
a. Name of Employer Google, Inc.		b. Tel. No. (650)253-3640	
		c. Cell No. (415)867-5506	
d. Address (street, city, state ZIP code) 1600 Amphitheatre Pkwy, Mountain View, CA 94043-1351		e. Employer Representative Jenn Blackstone Senior Counsel	
		f. Fax No.	
		g. e-Mail jblackstone@google.com	
		h. Dispute Location (City and State) Mountain View, CA	
i. Type of Establishment (factory, nursing home, hotel) Technology		j. Principal Product or Service Internet search engine	
		k. Number of workers at dispute location 30,000	
l. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.			
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)			
<p>Since about (b) (6), (b) (7)(C) 2015, the Employer has interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act by issuing a final written warning to employee (b) (6), (b) (7)(C) in retaliation for (b) (6), (b) (7)(C) protected concerted activity.</p>			
3. Full name of party filing charge (if labor organization, give full name, including local name and number) (b) (6), (b) (7)(C)			
4a. Address (street and number, city, state, and ZIP code) (b) (6), (b) (7)(C)		4b. Tel. No. (b) (6), (b) (7)(C)	
		4c. Cell No. (b) (6), (b) (7)(C)	
		4d. Fax No.	
		4e. e-Mail (b) (6), (b) (7)(C)	
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)			
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief. (b) (6), (b) (7)(C)		Tel. No. (b) (6), (b) (7)(C)	
By: (b) (6), (b) (7)(C)		Office, if any, Cell No. (b) (6), (b) (7)(C)	
(signature or representative or person making charge)		Fax No.	
Print Name and Title Date: 2015-11-23		e-Mail (b) (6), (b) (7)(C)	
Address: (b) (6), (b) (7)(C)			

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

(b) (6), (b) (7)(C)



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 32
1301 Clay St Ste 300N
Oakland, CA 94612-5224

Agency Website: www.nlr.gov
Telephone: (510)637-3300
Fax: (510)637-3315



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November 23, 2015

JENN BLACKSTONE, SENIOR COUNSEL
GOOGLE, INC.
1600 AMPHITHEATRE PKWY
MOUNTAIN VIEW, CA 94043-1351

Re: Google, Inc.
Case 32-CA-164766

Dear Ms. Blackstone:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Examiner Alexander M. Hajduk whose telephone number is (510)637-3271. If this Board agent is not available, you may contact Deputy Regional Attorney Jeffrey L. Henze whose telephone number is (510)637-3285.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlr.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be

considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

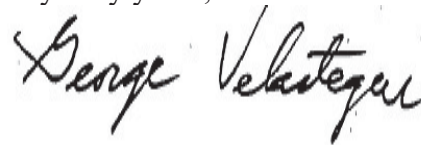
We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

Procedures: We strongly urge everyone to submit all documents and other materials by E-Filing (not e-mailing) through our website, www.nlr.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlr.gov or from an NLRB office upon your request. NLRB Form 4541 offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in black ink that reads "George Velastegui". The signature is written in a cursive, flowing style.

George Velastegui
Regional Director

Enclosures:

1. Copy of Charge
2. Commerce Questionnaire



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November 23, 2015

(b) (6), (b) (7)(C)

Re: **Google, Inc.**
Case 32-CA-164766

Dear (b) (6), (b) (7)(C)

The charge that you filed in this case on November 23, 2015 has been docketed as case number 32-CA-164766. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

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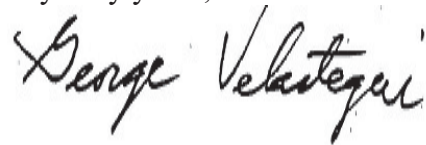
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We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in black ink that reads "George Velastegui". The signature is written in a cursive, flowing style.

George Velastegui
Regional Director

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**FIRST AMENDED CHARGE AGAINST EMPLOYER****INSTRUCTIONS:****DO NOT WRITE IN THIS SPACE**

Case

Date Filed

32-CA-164766

03/01/2016

File an original of this charge with NLRB Regional Director in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer Google, Inc.		b. Tel. No. (650)253-3640
		c. Cell No. (415)867-5506
d. Address (street, city, state ZIP code) 1600 Amphitheatre Pkwy, Mountain View, CA 94043-1351	e. Employer Representative Jenn Blackstone Senior Counsel	f. Fax No.
		g. e-Mail jblackstone@google.com
		h. Dispute Location (City and State) Mountain View, CA
i. Type of Establishment (factory, nursing home, hotel) Technology	j. Principal Product or Service Internet search engine	k. Number of workers at dispute location 30000

1. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Since about (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) 2015, the Employer has interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act by threatening an employee with threats of unspecified reprisal because of (b) (6), (b) (7)(C) protected concerted activity and by issuing a final written warning to employee (b) (6), (b) (7)(C) in retaliation for (b) (6), (b) (7)(C) protected concerted activity.

Since about August 6, 2015, and continuing to the present date, the Employer has interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act by maintaining, enforcing, and applying the Code of Conduct policy, the Appropriate Conduct policy, and the Policy Against Harassment, Discrimination, and Retaliation.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

(b) (6), (b) (7)(C)

4a. Address (street and number, city, state, and ZIP code)

(b) (6), (b) (7)(C)

4b. Tel. No.

(b) (6), (b) (7)(C)

4c. Cell No.

(b) (6), (b) (7)(C)

4d. Fax No.**4e. e-Mail**

(b) (6), (b) (7)(C)

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)**6. DECLARATION**

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

(b) (6), (b) (7)(C)

Tel. No.

(b) (6), (b) (7)(C)

By:

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

Office, if any, Cell No.

(b) (6), (b) (7)(C)

(signature of representative or person making charge)

Print Name and Title

Fax No.

Address (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

Date: 2016-02-29

e-Mail

(b) (6), (b) (7)(C)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)**PRIVACY ACT STATEMENT**

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March 2, 2016

JENN BLACKSTONE, SENIOR COUNSEL
GOOGLE, INC.
1600 AMPHITHEATRE PKWY
MOUNTAIN VIEW, CA 94043-1351

Re: **Google, Inc.**
Case 32-CA-164766

Dear Blackstone:

Enclosed is a copy of the first amended charge that has been filed in this case.

Investigator: This charge is being investigated by Field Examiner Alexander M. Hajduk whose telephone number is (510)637-3271. If the agent is not available, you may contact Deputy Regional Attorney Jeffrey L. Henze whose telephone number is (510)637-3285.

Presentation of Your Evidence: As you know, we seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations in the first amended charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Procedures: Your right to representation, the means of presenting evidence, and a description of our procedures, including how to submit documents, was described in the letter sent to you with the original charge in this matter. If you have any questions, please contact the Board agent.

Very truly yours,

George Velastegui
Regional Director

Enclosure: Copy of first amended charge

cc: ROSS H. FRIEDMAN, ATTORNEY
MORGAN LEWIS & BOCKIUS, LLP
77 W WACKER DR FL 5
CHICAGO, IL 60601-1671



UNITED STATES GOVERNMENT
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March 2, 2016

(b) (6), (b) (7)(C)

Re: **Google, Inc.**
Case 32-CA-164766

Dear (b) (6), (b) (7)(C):

We have docketed the first amended charge that you filed in this case.

Investigator: This charge is being investigated by Field Examiner Alexander M. Hajduk whose telephone number is (510)637-3271. If the agent is not available, you may contact Deputy Regional Attorney Jeffrey L. Henze whose telephone number is (510)637-3285.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. If you have additional evidence regarding the allegations in the first amended charge and you have not yet scheduled a date and time for the Board agent to obtain that evidence, please contact the Board agent to arrange to present that evidence. If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed.

Procedures: Your right to representation, the means of presenting evidence, and a description of our procedures, including how to submit documents, was described in the letter sent to you with the original charge in this matter. If you have any questions, please contact the Board agent.

Very truly yours,

George Velastegui
Regional Director

INTERNET
FORM NLRB-501
(2-08)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER**DO NOT WRITE IN THIS SPACE**Case
32-CA-176462Date Filed
05/17/2016**INSTRUCTIONS:**

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer Google, Inc. Nest Labs, Inc.		b. Tel. No.
		c. Cell No.
		f. Fax No.
d. Address (Street, city, state, and ZIP code) 1600 Amphitheatre Pkwy Mountain View, CA 94043	e. Employer Representative Michael Pfyl (Senior Counsel)	g. e-Mail michaelpfyl@google.com
		h. Number of workers employed @ 65,000
i. Type of Establishment (factory, mine, wholesaler, etc.) Tech Companies	j. Identify principal product or service Information and thermostats	
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 8(a)(3) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.		

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Employers made threats to Nest/Google employees and advised them to report their co-workers if they engage in protected concerted activity. Employers engage in unlawful surveillance of employees through accessing their electronic devices in order to chill, restrict, or take action against employees in the exercise of their section 7 rights. Employers engage in unlawful interrogation of employees in order to chill, restrict, or take action against employees in the exercise of their section 7 rights. Employers maintain a data classification policy and code of conduct that prohibits the exercise of section 7 rights. Employer terminated Charging Party on (b) (6), (b) (7) because (b) (6) exercised Section 7 rights and in order to aggressively chill the exercise of such rights by other employees. 10(J) RELIEF REQUESTED.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

(b) (6), (b) (7)(C)

4a. Address (Street and number, city, state, and ZIP code) c/o Chris Baker Baker & Schwartz, P.C. 44 Montgomery Street, Suite 3520 San Francisco, CA 94104		4b. Tel. No. 415.433.1064
		4c. Cell No.
		4d. Fax No.
		4e. e-Mail cbaker@bakerlp.com
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)		
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief. By <u>Chris Baker</u> (signature of representative or person making charge) Chris Baker (Print/type name and title or office, if any)		Tel. No. See above Office, if any, Cell No. Fax No. e-Mail
Address See above May 17, 2016 (date)		

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)**PRIVACY ACT STATEMENT**

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May 18, 2016

MICHAEL PFYL, SENIOR COUNSEL
GOOGLE, INC.
1600 AMPHITHEATRE PKWY
MOUNTAIN VIEW, CA 94043-1351

Re: **Google, Inc. and Nest Labs, Inc.**
Case 32-CA-176462

Dear Mr. Pfyl:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Attorney Edris W.I. Rodriguez Ritchie whose telephone number is (510)637-3296. If this Board agent is not available, you may contact Supervisory Attorney Catherine Ventola whose telephone number is (510)637-3288.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

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Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be

May 18, 2016

considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

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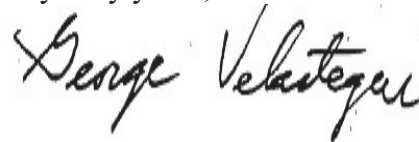
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Regional Director

Enclosures:

1. Copy of Charge
2. Commerce Questionnaire

cc: ROSS H. FRIEDMAN, ATTORNEY
MORGAN LEWIS & BOCKIUS, LLP
77 W WACKER DR FL 5
CHICAGO, IL 60601-1671



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

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May 18, 2016

(b) (6), (b) (7)(C)

C/O CHRIS BAKER
BAKER & SCHWARTZ, P.C.
44 MONTGOMERY STREET, SUITE 3520
SAN FRANCISCO, CA 94104

Re: **Google, Inc. and Nest Labs, Inc.**
Case 32-CA-176462

Dear (b) (6), (b) (7)(C):

The charge that you filed in this case on May 17, 2016 has been docketed as case number 32-CA-176462. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

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Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

May 18, 2016

Procedures: We strongly urge everyone to submit all documents and other materials by E-Filing (not e-mailing) through our website www.nlr.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website www.nlr.gov or from the Regional Office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

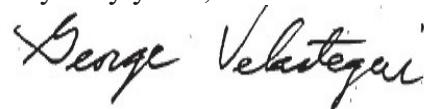
We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Qualifying for Backpay: We are just beginning to investigate your charge and no decision has been made regarding the merits of your case. However, it is important that employees who might be entitled to backpay because of loss of employment understand their obligation to look for work in order to qualify for backpay if your case has merit. Accordingly, we urge you to promptly provide the Board agent with the names and addresses of all employees who might be entitled to backpay as a result of the charge you filed.

If backpay is due to an employee, the Board requires that the employee offset the backpay by promptly beginning to look for another job in the same or similar line of work. The Board has held that a reasonably diligent employee should begin searching for interim work within 2 weeks after the employee's termination or layoff or a refusal to hire the employee. If an employee cannot establish that he or she actively tried to mitigate his or her losses, the amount of money owed to the employee might be reduced.

Employees who might be owed backpay should keep careful records of when and where they have sought employment and of job search expenses such as mileage, parking, and copying resumes. Specifically, they should keep a record of each time they attempt to find work, including the date, name of the company, name of person with whom they spoke, the position sought, and the response received.

Very truly yours,



George Velastegui
Regional Director

cc: CHRIS BAKER, ESQ.
BAKER & SCHWARTZ PC
44 MONTGOMERY ST STE 3520
SAN FRANCISCO, CA 94104-4828



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 32
1301 Clay St Ste 300N
Oakland, CA 94612-5224

Agency Website: www.nlrb.gov
Telephone: (510)637-3300
Fax: (510)637-3315

March 29, 2017

CHRIS BAKER, ESQ.
BAKER & SCHWARTZ PC
44 MONTGOMERY ST STE 3520
SAN FRANCISCO, CA 94104-4828

Re: Google, Inc. and Nest Labs, Inc.
Case 32-CA-176462

Dear Mr. BAKER:

We have carefully investigated and considered your charge that Google, Inc. and Nest Labs, Inc., a single employer, (collectively, the Employer) has violated the National Labor Relations Act.

Decision to Partially Dismiss: The charge, as elaborated upon during the investigation, alleges that the Employer violated Section 8(a)(1) of the Act by: (1) threatening employees with loss of jobs and benefits; (2) directing employees to report their coworkers if they engage in protected concerted activities; (3) engaging in surveillance of employees' protected concerted activities; (4) interrogating the Charging Party and engaging in surveillance of (b) (6), (b) (7) and (5) maintaining unlawful work rules and policies. In addition, the charge alleges that the Employer violated Section 8(a)(1) and (3) of the Act by terminating the Charging Party.

Based on the investigation, I have decided to partially dismiss the allegations that the Employer violated Section 8(a)(1) of the Act by threatening employees with loss with benefits and by interrogating the Charging Party or engaging in unlawful surveillance of (b) (6), (b) (7). In addition, I am dismissing the Section 8(a)(1) and (3) allegations that the Employer terminated the Charging Party because (b) (6), (b) (7) engaged in protected, concerted activity.

With regard to the alleged interrogation, surveillance, and termination of the Charging Party, as a threshold matter, the evidence established that the Charging Party is not an employee because (b) (6), (b) (7) possesses supervisory authority within the meaning of Section 2(11) of the Act and managerial authority to act in the interest of the Employer. In these circumstances (b) (6), (b) (7) lacks standing to invoke the Act's protection, even assuming the Employer engaged in surveillance of, interrogated, and terminated (b) (6), (b) (7) because of (b) (6), (b) (7) protected concerted activities. In this regard, the evidence establishes that (b) (6), (b) (7) possesses supervisory authority to promote and that (b) (6), (b) (7) has effectively promoted an employee with the use of independent judgment. While Section 7 of the Act protects employees who are engaged in protected concerted activities for the purpose of collective bargaining or other mutual aid or protection, Section 2(3) of the Act excludes supervisors from the definition of "an employee." Moreover, the Charging Party also formulates and effectuates the Employer's policies regarding the production of its products and in so doing (b) (6), (b) (7) exercises discretion in the interest of the Employer. Thus, even if the Charging Party were not a Section 2(11) supervisor, (b) (6), (b) (7) is a managerial employee who is also excluded from

coverage under the Act on that basis. See *NLRB v. Bell Aerospace Co.*, 416 U.S. 267 (1974). I further note that even if the Charging Party were an employee, there is no evidence that (b) (6), (b) engaged in any union activities sufficient to establish a Section 8(a)(3) violation of the Act. Accordingly, for all of the above reasons, I am dismissing the allegations that the Employer violated Section 8(a)(1) and (3) of the Act by unlawfully interrogating, engaging in surveillance of, and terminating the Charging Party.

All other portions of the charge remain outstanding and are subject to further proceedings, including that the employer (1) Employer (1) threatened employees with loss of jobs; (2) threatened to retaliate against employees for engaging in protected concerted activities; (3) directed employees to report their coworkers who engaged in protected concerted activities; (4) created an impression that employees' protected concerted activities were under surveillance; and (5) maintained other work rules and policies.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals. If you appeal, you may use the enclosed Appeal Form, which is also available at www.nlr.gov. However, you are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect.

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax or email. To file an appeal electronically, go to the Agency's website at www.nlr.gov, click on **E-File Documents**, enter the **NLRB Case Number**, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the **General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

Appeal Due Date: The appeal is due on April 12, 2017. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than April 11, 2017. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before** April 12, 2017. The request may be filed electronically through the **E-File Documents** link on our website www.nlr.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after April 12, 2017, **even if it is postmarked or given to the delivery service before the due date**. Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

/s/ VALERIE HARDY-MAHONEY

VALERIE HARDY-MAHONEY
Regional Director

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LOS ANGELES, CA 90071-2228

(b) (6), (b) (7)(C)

C/O CHRIS BAKER BAKER &
SCHWARTZ, P.C.
44 MONTGOMERY STREET, SUITE
3520
SAN FRANCISCO, CA 94104

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

GOOGLE, INC.

and

Case 32-CA-164766

(b)(6) (b)(7)(C), an Individual

and

**GOOGLE INC., AND NEST LABS, INC., A
SINGLE EMPLOYER**

and

Case 32-CA-176462

(b)(6) (b)(7)(C), an Individual

**ORDER CONSOLIDATING CASES, CONSOLIDATED
COMPLAINT AND NOTICE OF HEARING**

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT Case 32-CA-164766, which is based on a charge filed by **(b)(6) (b)(7)(C)**, an Individual, **(b)(6) (b)(7)(C)** against Google, Inc. (Respondent Google) and Case 32-CA-176462, which is based on a charge filed by **(b)(6) (b)(7)(C)**, an Individual **(b)(6) (b)(7)(C)**, against Google, Inc., and Nest Labs, Inc., a single employer, (Respondent Google/Nest), are consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq. and Section 102.15 of the Board's Rules and Regulations, and alleges that Respondent Google and/or Respondent Nests have violated the Act as described below.

1.

(a) The charge in Case 32-CA-164766 was filed by (b)(6) (b)(7)(C) on November 23, 2015, and a copy was served on Respondent Google by regular mail on that same date.

(b) A first-amended charge in Case 32-CA-164766 was filed by (b)(6) (b)(7)(C) on March 1, 2016, and a copy was served on Respondent Google by regular mail on March 2, 2017.

(c) The charge in Case 32-CA-176462 was filed by (b)(6) (b)(7)(C) on May 17, 2016, and a copy was served on Respondent Google/Nest by regular mail on May 18, 2016.

2.

(a) At all material times, Respondent Google, a corporation with an office and place of business in Mountain View, California (Respondent Google's Facility), has been engaged in the provision of internet search engine results and the retail sale of advertisements and related products to the general public.

(b) At all material times, Respondent Nest Labs, Inc., a corporation with an office and place of business in Mountain View, California (Respondent Nest's Facility), has been engaged in the retail sale and manufacture of home security products, home energy products and related products to the general public.

(c) At all material times, Respondent Google and Respondent Nest Labs, Inc. have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; have interrelated operations with common use of

intranet systems, employee programs, and facilities; and have held themselves out to the public as a single-integrated business enterprise.

(d) Based on its operations described above in paragraph 2(a) through 2(c), Respondent Google and Respondent Nest Labs, Inc. (Respondent Google/Nest) constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

(e) In conducting their respective operations during the 12-month period ending on March 31, 2017, Respondent Google and Respondent Google/Nest each derived gross revenues in excess of \$500,000.

(f) In conducting its operations during the 12-month period ending on March 31, 2017, Respondent Google sold and shipped from Respondent Google's Facility, products, goods, and materials valued in excess of \$5,000 directly to points outside the State of California.

(h) In conducting its operations during the 12-month period ending on March 31, 2017, Respondent Google/Nest sold and shipped from Respondent Google/Nest's Facility, products, goods, and materials valued in excess of \$5,000 directly to points outside the State of California.

4.

(a) At all material times, Respondent Google has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

(b) At all material times, Respondent Google/Nest has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

5.

(a) At all material times, the following individuals held the positions set forth opposite their respective names and have been managers or supervisors of Respondent Google

within the meaning of Section 2(11) of the Act and agents of Respondent Google within the meaning of Section 2(13) of the Act:

(b)(6) (b)(7)(C)	-	(b)(6) (b)(7)(C) (b)(6) (b)(7)(C)
(b)(6) (b)(7)(C)	-	(b)(6) (b)(7)(C)
(b)(6) (b)(7)(C)	-	(b)(6) (b)(7)(C)
(b)(6) (b)(7)(C)	-	(b)(6) (b)(7)(C)
(b)(6) (b)(7)(C)	-	(b)(6) (b)(7)(C)

(b) At all material times, the following individuals held the positions set forth opposite their respective names and have been managers or supervisors of Respondent Google/Nest within the meaning of Section 2(11) of the Act and agents of Respondent Google/Nest within the meaning of Section 2(13) of the Act:

(b)(6) (b)(7)(C)	-	(b)(6) (b)(7)(C)
(b)(6) (b)(7)(C)	-	(b)(6) (b)(7)(C)

6.

At all material times since September 1, 2015, until about November 1, 2016, as to Respondent Google, and at all material times since November 17, 2015, until about November 1, 2016, as to Respondent Google/Nest, Respondents maintained the following rules and/or policies:

(a) A rule regarding confidentiality in the "Data Classification Guidelines" and related "Data Security Policy," which prohibit employees from discussing their wages and other employee information by defining "All Employee Data" as "Confidential Information" and "Need-to-Know Information," expressly including "Recruiting Information," Performance

Compensation & Benefits Information,” and “Employment Records,” and restricting disclosure of such “Need-to-Know Information” to authorized individuals who need to know the information to perform their job. Copies of the “Data Classification Guidelines” and the “Data Security Policy” are attached as Exhibits 1(a) and 1(b), respectively. The portions of the “Data Classification Guidelines” and the related “Data Security Policy” alleged to be unlawful are highlighted in Exhibits 1(a) and 1(b).

(b) A rule regarding confidentiality under the heading “Preserve Confidentiality” in Section IV of the “Google Code of Conduct,” which restricts disclosure of “confidential information” and/or “need to know” information and requires employees to “apply your best judgment in making sure you don’t disclose confidential information” and instructs employees not to “tell your significant other or family members anything confidential.” These restrictions on the discussion of “confidential” and “need to know” information are overly broad in light of the unlawful provisions regarding “Confidential Information” and “Need to Know Information” in the “Data Classification Guidelines.”

(c) A rule regarding confidentiality under the heading “Outside Communication and Research” in Section IV of the “Google Code of Conduct,” set forth below, which is overly broad in light of the unlawful provisions regarding “Confidential Information” and “Need to Know Information” in the “Data Classification Guidelines:”

You probably know that our policy is to be extremely careful about disclosing company information, and never to disclose any confidential information without authorization.

(d) A rule regarding “Employee Data” under Section V of the “Google Code of Conduct,” set forth below, which is overly broad in light of the unlawful provisions regarding

“Confidential Information” and “Need to Know Information” in the “Data Classification Guidelines:”

(b) (4)

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(e) A confidentiality provision in the “Google At-Will Employment, Confidential Information, Invention Assignment and Arbitration Agreement” which provides as follows:

(b) (4)

A large black rectangular redaction box covering the majority of the page content below the text.

(b) (4)



(f) A rule regarding “Conflicting Employment” in the “Google At-Will Employment, Confidential Information, Invention Assignment and Arbitration Agreement” which provides as follows:

(b) (4)



(g) A rule regarding “Outside Communication and Research” in Section IV of the “Google Code of Conduct” which provides as follows:

(b) (4)



(h) A rule requiring employees to “Avoid Conflict of Interest” in Section III of the “Google Code of Conduct” which provides as follows:

(b) (4)



(b) (4)



(i) A rule regarding “Company Equipment” in Section V of the “Google Code of Conduct” entitled “Protect Google’s Assets” which provides as follows:

(b) (4)



(j) A rule requiring employees to “Respect Each Other” in Section 2 of the “Google Code of Conduct” which provides as follows:

(b) (4)



(k) A rule in the “Appropriate Conduct Policy” which provides as follows:

(b) (4)



(b) (4)



(l) A rule regarding confidentiality in the “Google Employee Communications Policy” which provides as follows:

(b) (4)



(b) (4)



(m) A rule regarding “Internal Googler Communications” in the “Google
Employee Communications Policy,” which provides as follows:

(b) (4)



(b) (4)

A large rectangular area of the document is completely redacted with a solid black fill.

- (n) A “Corporate Services Security Policy” which provides as follows:

(b) (4)

A large rectangular area of the document is completely redacted with a solid black fill.

(b) (4)



(o) Various rules regarding external communications are set forth in the “Employee Communications Policy,” Part 3, “External Communications,” which impose restrictions upon employees’ rights to engage in protected speech and/or criticism of Respondent Google and Respondent Google/Nest. “External Communications” is attached as Exhibit 2, with the portions alleged to be unlawful highlighted.

7.

Respondent Google:

(a) On August 6, 2015, by its (b)(6) (b)(7)(C), through a written posting on its intranet website G+, threatened employees with unspecified acts of reprisal by instructing an employee to stop engaging in protected, concerted activities.

(b) About August 19, 2015, Respondent Google, by its (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) threatened an employee with unspecified acts of reprisal by instructing an employee to stop engaging in protected, concerted activities.

8.

Respondent Google/Nest:

(a) By its legal representative:

(i) On March 24, 2016, by email to all Respondent Google/Nest employees, threatened employees with termination and legal action for engaging in protected, concerted activities and created an impression that their concerted activities were under surveillance; and

(ii) On April 18, 2016, at an all-hands meeting broadcast to all Respondent Google/Nest employees, created the impression that their protected concerted activities were under surveillance and threatened and coerced employees by announcing a confidentiality policy that restricted employees' rights to engage in protected speech.

(b) By (b)(6) (b)(7)(C), Respondent Google's (b)(6) (b)(7)(C)

(b)(6) (b)(7)(C)

(i) On April 18, 2016, during an all-hands meeting which was broadcast to all Respondent Google/Nest employees, created an impression that their protected concerted activities were under surveillance and threatened and coerced employees by asking them to report other employees for engaging in protected concerted activities;

(ii) On May 6, 2016, in an email sent to all Respondent Google and Respondent Google/Nest employees, created the impression that their protected concerted activities were under surveillance and threatened and coerced employees by asking them to report other employees for engaging in protected concerted activities, threatened employees with termination for engaging in protected, concerted activities, and announced rules regarding confidentiality that restricted employees' rights to engage in protected speech.

9.

(a) On (b)(6) (b)(7)(C) 2015, Respondent Google's employee, (b)(6) (b)(7)(C) engaged in protected concerted activities for the purposes of mutual aid and protection by posting comments on Respondent Google's intranet website G+, regarding workplace diversity and social justice initiatives, workplace policy viewpoints, and regarding employees' rights to express their

opinions on G+, and by sending an email to Respondent's (b)(6) (b)(7)(C), regarding these matters.

(b) About (b)(6) (b)(7)(C) 2015, Respondent Google issued a final written warning to (b)(6) (b)(7)(C)

(c) Respondent Google engaged in the conduct described above in paragraph 9(b) because (b)(6) (b)(7)(C) engaged in the conduct described above in paragraph 9(a), and to discourage employees from engaging in these or other concerted activities.

10.

By the conduct described above in paragraphs 6, 7, 8, and 9, Respondent Google has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

11.

By the conduct described above in paragraphs 6 and 8, Respondent Google/Nest has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

12.

The unfair labor practices of Respondent Google and Respondent Google/Nest described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

SPECIAL REMEDIES

WHEREFORE, as part of the remedy for violations alleged above, the General Counsel seeks an Order requiring Respondents to rescind their overly broad or otherwise unlawful policies on a nationwide basis, post a remedial Notice to Employees on a nationwide basis, and post the same Notice on Respondents' Intranet and/or electronic bulletin board, and email the

Notice to employees nationwide consistent with Respondents' normal methods of communicating with employees. The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the Consolidated Complaint. The answer must be **received by this office on or before May 11, 2017, or postmarked on or before May 12, 2017.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

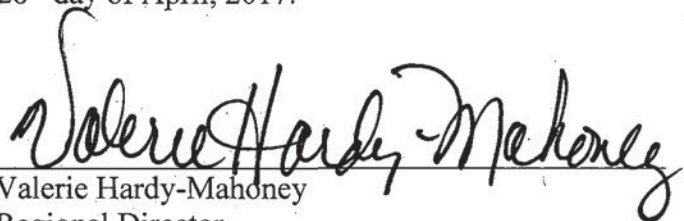
An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer

containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Consolidated Complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on July 18, 2017, at 9:00 a.m., at the Oakland Regional Office, located at 1301 Clay Street, Suite 300N, in Oakland, California 94612-5224, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

DATED AT Oakland, California, this 28th day of April, 2017.



Valerie Hardy-Mahoney
Regional Director
National Labor Relations Board
Region 32
1301 Clay Street Suite 300N
Oakland, CA 94612-5224

Attachments

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

GOOGLE, INC.

and

Case 32-CA-164766

(b) (6), (b) (7)(C), an Individual

and

**GOOGLE INC., AND NEST LABS, INC., A
SINGLE EMPLOYER**

and

Case 32-CA-176462

(b) (6), (b) (7)(C), an Individual

ORDER RESCHEDULING HEARING

At the request of counsel for Charging Party Scott Ruffner and Respondents Google, Inc. and Google, Inc. and Nest Labs, Inc., a single employer, and upon good cause shown, **IT IS HEREBY ORDERED** that the hearing in the above matter, which was scheduled to commence on July 18, 2017, is rescheduled to August 28, 2017, an agreed upon date by all parties, and on consecutive days thereafter, at 9:00 a.m. in the Oakland Regional Office of the Board, 1301 Clay Street, Suite 300N, Oakland, California 94612-5224.

DATED AT Oakland, California this 12th day of May, 2017.

/s/ Valerie Hardy-Mahoney

Valerie Hardy-Mahoney
Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Suite 300N
Oakland, CA 94612-5224

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Attorneys for Respondents
GOOGLE INC. AND NEST LABS, INC.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

GOOGLE, INC.

and

(b) (6), (b) (7)(C)

an Individual

and

GOOGLE, INC., AND NEST LABS, INC.,
A SINGLE EMPLOYER

and

(b) (6), (b) (7)(C)

an Individual

CASE NOS. 32-CA-164766
32-CA-176462

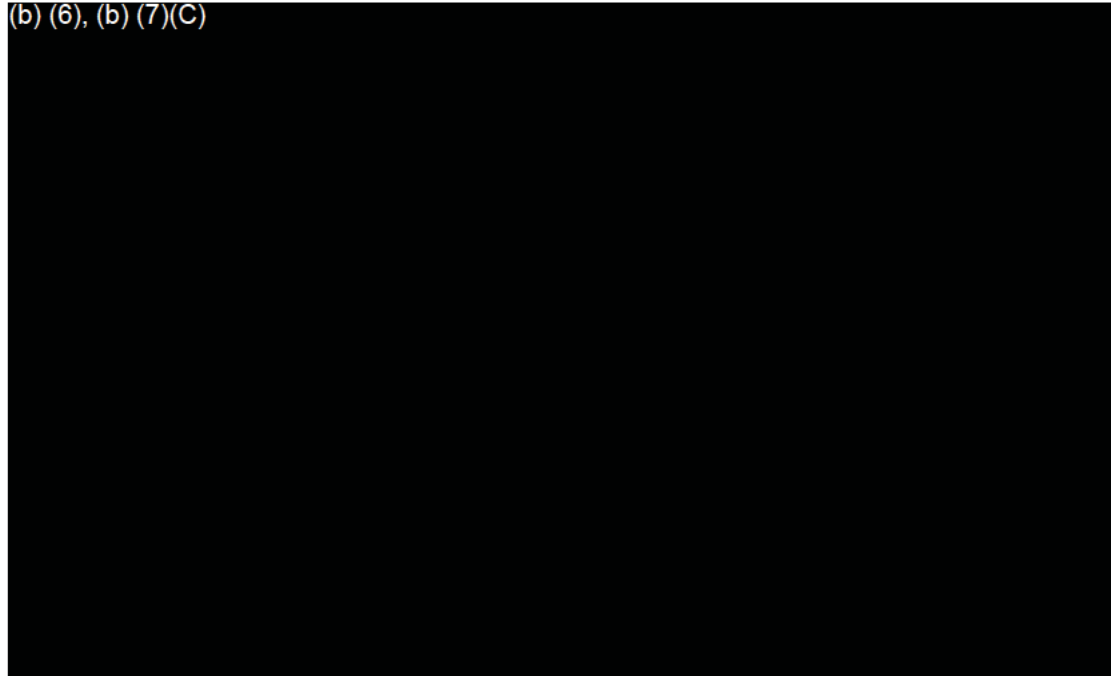
**ANSWER OF GOOGLE INC.
AND NEST LABS, INC. TO
CONSOLIDATED
COMPLAINT**

ANSWER

Google Inc. and Nest Labs, Inc. (collectively “Respondents”) answer the allegations in the Consolidated Complaint dated April 28, 2017, as follows:

1. (a) Admit;
- (b) Deny on the ground that the first amended charge in Case No. 32-32-CA-164766 was served on March 2, 2016;
- (c) Admit.
2. (a) Admit;
- (b) Admit;
- (c) Admit that, for the purposes of this Consolidated Complaint, Respondents are a single employer. Except as expressly admitted, deny;
- (d) Admit that, for the purposes of this Consolidated Complaint, Respondents are a single employer. Except as expressly admitted, deny;
- (e) Admit;
- (f) Admit;
- (h) Admit.
4. (a) Admit;
- (b) Admit.
5. (a) Admit that the following individuals held the following positions at Google during all material timeframes alleged in the Complaint as indicated below, and admit that they were supervisors within the meaning of Section 2(11) of the Act and agents of Google within the meaning of Section 2(13) of the Act:


(b) (6), (b) (7)(C)



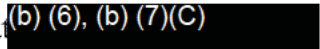
Except as expressly admitted, deny;

(b) Admit that (b) (6), (b) (7)(C) held the position of (b) (6), (b) (7)(C)


(b) (6), (b) (7)(C)



and that (b) (6), (b) (7)(C)



held the position of (b) (6), (b) (7)(C)



during all material times alleged in the Complaint. Except as expressly admitted, deny;

6. (a) Admit that during at least some of the material time frame alleged in the Complaint (September 1, 2015 through November 1, 2016), Respondents maintained the “Data Classification Guidelines” and “Data Security Policy” that are attached to the Consolidated Complaint as Exhibits 1(a) and 1(b). Except as expressly admitted, deny;

(b) Admit that during at least some of the material time frame alleged in the Complaint (September 1, 2015 through November 1, 2016), Respondents maintained a rule titled “Preserve Confidentiality” in Section IV of the “Google Code of Conduct.” Except as expressly admitted, deny;

(c) Admit that during at least some of the material time frame alleged in the Complaint (September 1, 2015 through November 1, 2016), Respondents maintained a rule titled “Outside Communication and Research” in Section IV of the “Google Code of Conduct” that included the quoted language. Except as expressly admitted, deny;

(d) Admit that during at least some of the material time frame alleged in the Complaint (September 1, 2015 through November 1, 2016), Respondents maintained a rule titled “Employee Data” in Section V of the “Google Code of Conduct” that included the quoted language. Except as expressly admitted, deny;

(e) Admit that during at least some of the material time frame alleged in the Complaint (September 1, 2015 through November 1, 2016), Respondents maintained a provision in the “Google At-Will Employment, Confidential Information, Invention Assignment and Arbitration Agreement” that included the quoted language. Except as expressly admitted, deny;

(f) Admit that during at least some of the material time frame alleged in the Complaint (September 1, 2015 through November 1, 2016), Respondents maintained a provision titled “Conflicting Employment” in the “Google At-Will Employment, Confidential Information, Invention Assignment and Arbitration Agreement,” which included the quoted language. Except as expressly admitted, deny;

(g) Admit that during at least some of the material time frame alleged in the Complaint (September 1, 2015 through November 1, 2016), Respondents maintained a provision titled “Outside Communication and Research” in Section IV of the “Google Code of Conduct” that included the quoted language. Except as expressly admitted, deny;

(h) Admit that during at least some of the material time frame alleged in the Complaint (September 1, 2015 through November 1, 2016), Respondents maintained a provision titled “Avoid Conflicts of Interest” in Section III of the “Google Code of Conduct” that included the quoted language. Except as expressly admitted, deny;

(i) Admit that during at least some of the material time frame alleged in the Complaint (September 1, 2015 through November 1, 2016), Respondents maintained a provision titled “Company Equipment” in Section V of the “Google Code of Conduct” entitled “Protect Google’s Assets” that included the quoted language. Except as expressly admitted, deny;

(j) Admit that during at least some of the material time frame alleged in the Complaint (September 1, 2015 through November 1, 2016), Respondents maintained a provision titled “Respect Each Other” in Section II of the “Google Code of Conduct” that included the quoted language. Except as expressly admitted, deny;

(k) Admit that during at least some of the material time frame alleged in the Complaint (September 1, 2015 through November 1, 2016), Respondents maintained an “Appropriate Conduct Policy” that included the quoted language. Except as expressly admitted, deny;

(l) Admit that during at least some of the material time frame alleged in the Complaint (September 1, 2015 through November 1, 2016), Respondents maintained a “Google Employee Communications Policy” that included the quoted language. Except as expressly admitted, deny;

(m) Admit that during at least some of the material time frame alleged in the Complaint (September 1, 2015 through November 1, 2016), Respondents maintained an

“Internal Google Communications” in the “Google Employee Communications Policy” that included the quoted language. Except as expressly admitted, deny;

(n) Admit that during at least some of the material time frame alleged in the Complaint (September 1, 2015 through November 1, 2016), Respondents maintained a “Corporate Services Security Policy” that included the quoted language. Except as expressly admitted, deny;

(o) Deny.

7. (a) Deny;

(b) Deny.

8. (a) (i) Deny; (ii) Deny;

(b) (i) Deny; (ii) Deny.

9. (a) Deny;

(b) Admit;

(c) Deny.

10. Deny.

11. Deny.

12. Deny.

FIRST AFFIRMATIVE DEFENSE

With regard to Respondents’ policies, Respondents have already modified them and reissued them to the workforce. As a result, the policy-based allegations the General Counsel seeks to litigate are moot, and pursuing the Complaint on those policies does not serve the purposes of the Act. Paragraph 6 of the Complaint and the portions of paragraphs 10 and 11 referencing paragraph 6 should therefore be dismissed. *See Northwestern University*, Case No.

13-CA-157467 (Advice Memorandum, September 22, 2016). *See also, Jimmy Wakely Show*, 202 NLRB 620 (1973).

SECOND AFFIRMATIVE DEFENSE

The Board's decision in *Purple Communications, Inc.*, 361 NLRB No. 43 (2014), should be overruled, and Board law should return to that as stated in *Register Guard*, 351 NLRB 1110 (2007). *See Purple Communications* at *18-61 (dissents by now-Chairman Miscimarra and then-Member Johnson).

THIRD AFFIRMATIVE DEFENSE

The Board's decisions in *William Beaumont Hospital*, 363 NLRB No. 162 (2016), and *Verizon Wireless, Inc.*, 365 NLRB No. 38 (2017), should be overruled. *See, e.g., William Beaumont Hospital*, at *7-17 (now-Chairman Miscimarra's dissent).

FOURTH AFFIRMATIVE DEFENSE

The allegations in the Complaint cite only excerpts of policies and fail to take into account the context of the passages cited. The Board does not read rules in isolation, and context must be considered. *See, e.g., Tradesmen International*, 338 NLRB 460, 462 (2002); GC Memorandum 15-04.

FIFTH AFFIRMATIVE DEFENSE

Because Respondents have already modified their policies and announced the modifications to the workforce, this is not a case in which special remedies are appropriate.

SIXTH AFFIRMATIVE DEFENSE

Google denies that it disciplined (b) (6), (b) (7)(C) in whole or in part for protected conduct,

but the same discipline would have been imposed even in the absence of protected conduct. *See Wright Line*, 251 NLRB 1083 (1980), *enforced*, 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982).

SEVENTH AFFIRMATIVE DEFENSE

Google denies that its previous Code of Conduct and its previous Appropriate Conduct Policy were overbroad, but the discipline of (b) (6), (b) (7)(C) was warranted by (b) (6), (b) (7)(C) misconduct, which actually interfered with Google's lawful interest in maintaining an inclusive workplace for (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) that is free of unlawful bias, discrimination and harassment. The discipline of (b) (6), (b) (7)(C) was also warranted by (b) (6), (b) (7)(C) violations of other policies, such as Google's Policy Against Harassment Discrimination and Retaliation, the validity of which is not at issue. *See Continental Group, Inc.*, 357 NLRB 409 (2011).

EIGHTH AFFIRMATIVE DEFENSE

The March 24, 2016 and May 6, 2016 emails that are alleged in the Complaint, and the alleged comments during the April 18, 2016 meeting, lawfully notified employees of Respondents' established practice of monitoring computers and email systems for legitimate management reasons, such as preventing the theft of intellectual property and trade secrets. *Purple Communications, Inc.*, 361 NLRB No. 43 (2014).

NINTH AFFIRMATIVE DEFENSE

If the allegations of the Complaint are adopted by the Board, the decision would interfere with Respondents' obligations under the law to maintain a work environment that is free of unlawful discrimination, harassment and bias. *See, e.g.*, 42 U.S.C. § 2000c *et seq.*, as amended (Title VII of the Civil Rights Act of 1964); 29 CFR §1604.11(d) ("[a]n employer may also be responsible for ... harassment of employees in the workplace, where the employer . . . knows or

should have known of the conduct and fails to take immediate and appropriate corrective action.”). *See also*, Cal. Govt Code § 12900 *et seq.* (California’s Fair Employment and Housing Act).

For all of the foregoing reasons, the Complaint should be dismissed in its entirety.

DATED: May 12, 2017

Respectfully submitted,

PAUL HASTINGS LLP
CAMERON W. FOX
J. AL LATHAM, JR.
BLAKE R. BERTAGNA
ANKUSH DHUPAR

By: 

CAMERON W. FOX
PAUL HASTINGS LLP
515 So. Flower Street, 25th Floor
Los Angeles, California 90071

Attorneys for Respondents
GOOGLE INC. and
NEST LABS, INC.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570

June 8, 2017

CHRIS BAKER, ESQ.
BAKER & SCHWARTZ PC
44 MONTGOMERY ST STE 3520
SAN FRANCISCO, CA 94104-4828

Re: Google, Inc. and Nest Labs, Inc., A Single
Employer
Case 32-CA-176462

Dear Mr. Baker:

Your appeal from the Regional Director's partial refusal to issue complaint has been carefully considered. The appeal is denied substantially for the reasons in the Regional Director's letter of March 29, 2017. Accordingly, further proceedings are unwarranted.

Sincerely,

Richard F. Griffin, Jr.
General Counsel

A handwritten signature in dark ink, appearing to read "E. Watts", is written over a horizontal line.

By: _____
Elicia L. Watts, Acting Director
Office of Appeals

cc: VALERIE HARDY-MAHONEY
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS
BOARD
1301 CLAY ST STE 300N
OAKLAND, CA 94612-5224

(b) (6), (b) (7)(C)
C/O CHRIS BAKER BAKER &
SCHWARTZ, PC
44 MONTGOMERY ST STE 3520
SAN FRANCISCO, CA 94104

MICHAEL PFYL, SENIOR COUNSEL
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1600 AMPHITHEATRE PKWY
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PAUL HASTINGS LLP
515 S FLOWER ST FL 25
LOS ANGELES, CA 90071-2228

kf

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

GOOGLE, INC.

and

Case 32-CA-164766

(b) (6), (b) (7)(C), an Individual

and

**GOOGLE INC., AND NEST LABS, INC., A
SINGLE EMPLOYER**

and

Case 32-CA-176462

(b) (6), (b) (7)(C), an Individual

ORDER RESCHEDULING HEARING

IT IS HEREBY ORDERED that, due to the filing of a new charge in related Case 32-CA-201160, the hearing in the above matter, which was scheduled to commence on August 28, 2017, is rescheduled to October 17, 2017, and on consecutive days thereafter, at 9:00 a.m. in the Oakland Regional Office of the Board, 1301 Clay Street, Suite 300N, Oakland, California 94612-5224.

DATED AT Oakland, California this 21st day of July, 2017.

/s/ Valerie Hardy-Mahoney

Valerie Hardy-Mahoney
Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Suite 300N
Oakland, CA 94612-5224

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

GOOGLE, INC.

and

Case 32-CA-164766

(b)(6), (b)(7)(C) an Individual

and

**GOOGLE INC., AND NEST LABS, INC., A
SINGLE EMPLOYER**

and

Case 32-CA-176462

(b)(6), (b)(7)(C) an Individual

ORDER RESCHEDULING HEARING

IT IS HEREBY ORDERED that, due to a request for postponement by Respondent's counsel and for good cause shown, the hearing in the above matter, which was scheduled to commence on October 17, 2017, is rescheduled to November 7, 2017, and on consecutive days thereafter, at 9 a.m. in the Oakland Regional Office of the Board, 1301 Clay Street, Suite 300N, Oakland, California 94612-5224.

DATED AT Oakland, California this 2nd day of August 2017.

/s/ Valerie Hardy-Mahoney

Valerie Hardy-Mahoney
Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Suite 300N
Oakland, CA 94612-5224

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

GOOGLE, INC.

and

Case 32-CA-164766

(b)(6), (b)(7)(C) an Individual

and

**GOOGLE INC., AND NEST LABS, INC., A
SINGLE EMPLOYER**

and

Case 32-CA-176462

(b)(6), (b)(7)(C) an Individual

ORDER POSTPONING HEARING INDEFINITELY

On July 21, 2017, the hearing in this matter was postponed due to the filing of a new charge in related Case 32-CA-201160. Subsequently, another new charge was filed in related Case 32-CA-205351. **IT IS HEREBY ORDERED** that, pending the investigation of the new charge in related Case 32-CA-205351, the hearing in the above matter, which was scheduled to commence on November 7, 2017, is postponed indefinitely.

DATED AT Oakland, California this 4th day of October 2017.

/s/ Valerie Hardy-Mahoney

Valerie Hardy-Mahoney
Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Suite 300N
Oakland, CA 94612-5224

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

GOOGLE, INC.

and

Case 32-CA-164766

(b) (6), (b) (7)(C), an Individual

and

**GOOGLE INC., AND NEST LABS, INC., A
SINGLE EMPLOYER**

and

Case 32-CA-176462

(b) (6), (b) (7)(C), an Individual

**ORDER APPROVING WITHDRAWAL REQUEST
AND DISMISSING PORTIONS OF THE COMPLAINT**

A Complaint and Notice of Hearing ("Complaint") issued in the above-captioned matter on April 28, 2017, alleging that Respondent's maintenance of the work rules alleged in Complaint paragraph 6 is a violation of Section 8(a)(1) of the Act, among other violations. On October 4, 2017, the hearing was postponed indefinitely pending the investigation of a new related charge. Thereafter, on December 14, 2017, the Board issued its decision in *The Boeing Co.*, 365 NLRB No. 154, which altered the legal standard by which to determine whether facially neutral work rules are unlawful under the Act. Thereafter, the Charging Party in Case 32-CA-164766 requested withdrawal of the portions of the charge which I have concluded no longer violate the Act under *The Boeing Co.* However, the Charging Party in Case 32-CA-176462 has not requested withdrawal of these Complaint allegations. Accordingly,

IT IS ORDERED that Charging Party's request to partially withdraw the charge in Case 32-CA-164766 is approved, and

IT IS FURTHER ORDERED that paragraph 6 of the Complaint is dismissed except for portions of paragraph 6(a), 6(g), portions of 6(l) and portions of 6(o).¹ Specifically, all portions

¹ **Your Right to Appeal:** You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals.

of paragraph 6 are dismissed except for the following rules or policies: (1) a rule regarding confidentiality in the “Data Classification Guidelines” and related “Data Security Policy” that (b)(4) (2) a rule regarding “Employment Records” in the “Data Classification Guidelines” and related “Data Security Policy” that (b)(4) (b)(4) (b)(4) (3) a rule in the “Appropriate Conduct Policy” which states: (b)(4) (b)(4) (4) a rule regarding “Interacting with the Press” in the Employee Communications Policy which states: (b)(4) (b)(4) and (5) a rule regarding “Outside Communication and Research” in Section IV of the “Google Code of Conduct” which states: (b)(4) (b)(4) (b)(4) All other paragraphs of the Complaint remain subject to further proceedings.

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. To file electronically using the Agency’s e-filing system, go to our website at www.nlr.gov and:

- 1) Click on E-File Documents;
- 2) Enter the NLRB Case Number; and,
- 3) Follow the detailed instructions.

Electronic filing is preferred, but you also may use the enclosed Appeal Form, which is also available at www.nlr.gov. You are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect. To file an appeal by mail or delivery service, address the appeal to the **General Counsel** at the **National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

The appeal MAY NOT be filed by fax or email. The Office of Appeals will not process faxed or emailed appeals.

Appeal Due Date: The appeal is due **October 12, 2018**. If the appeal is filed electronically, the transmission of the entire document through the Agency’s website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than **October 11, 2018. If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before October 12, 2018**. The request may be filed electronically through the **E-File Documents** link on our website www.nlr.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after **October 12, 2018, even if it is postmarked or given to the delivery service before the due date.** Unless filed electronically, a copy of the extension of time should also be sent to me.

DATED AT Oakland, California this 28th day of September 2018.

/s/ Valerie Hardy-Mahoney

Valerie Hardy-Mahoney
Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Suite 300N
Oakland, CA 94612-5224

Attachment(s)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

GOOGLE, INC.

and

Case 32-CA-164766

(b) (6), (b) (7)(C) an Individual

and

GOOGLE INC., AND NEST LABS, INC., A
SINGLE EMPLOYER

and

Case 32-CA-176462

(b) (6), (b) (7)(C) an Individual

AMENDED CONSOLIDATED COMPLAINT
AND NOTICE OF HEARING

Pursuant to Section 102.17 of the National Labor Relations Board (the Board), the Consolidated Complaint and Notice of Hearing that issued on April 28, 2017, based on a charge filed by (b) (6), (b) (7)(C) an Individual, (b) (6), (b) (7)(C) against Google, Inc. (Respondent Google) and a charge filed by (b) (6), (b) (7)(C) an Individual, (b) (6), (b) (7)(C) against Google, Inc. and Nest Labs, Inc., a single employer, (Respondent Nest) is amended as follows.

1.

(a) The charge in Case 32-CA-164766 was filed by (b) (6), (b) (7)(C) on November 23, 2015, and a copy was served on Respondent Google by regular mail on that same date.

(b) A first-amended charge in Case 32-CA-164766 was filed by (b) (6), (b) (7)(C) on March 1, 2016, and a copy was served on Respondent Google by regular mail on March 2, 2017.

(c) The charge in Case 32-CA-176462 was filed by (b) (6), (b) (7)(C) on May 17, 2016, and a copy was served on Respondent Google/Nest by regular mail on May 18, 2016.

2.

(a) At all material times, Respondent Google, a corporation with an office and place of business in Mountain View, California (Respondent Google's Facility), has been engaged in the provision of internet search engine results and the retail sale of advertisements and related products to the general public.

(b) At all material times, Respondent Nest Labs, Inc., a corporation with an office and place of business in Mountain View, California (Respondent Nest's Facility), has been engaged in the retail sale and manufacture of home security products, home energy products and related products to the general public.

(c) At all material times, Respondent Google and Respondent Nest Labs, Inc. have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; have interrelated operations with common use of intranet systems, employee programs, and facilities; and have held themselves out to the public as a single-integrated business enterprise.

(d) Based on its operations described above in paragraph 2(a) through 2(c), Respondent Google and Respondent Nest Labs, Inc. (Respondent Google/Nest) constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

(e) In conducting their respective operations during the 12-month period ending on March 31, 2017, Respondent Google and Respondent Google/Nest each derived gross revenues in excess of \$500,000.

(f) In conducting its operations during the 12-month period ending on March 31, 2017, Respondent Google sold and shipped from Respondent Google's Facility, products, goods, and materials valued in excess of \$5,000 directly to points outside the State of California.

(g) In conducting its operations during the 12-month period ending on March 31, 2017, Respondent Google/Nest sold and shipped from Respondent Google/Nest's Facility, products, goods, and materials valued in excess of \$5,000 directly to points outside the State of California.

4.


(a) At all material times, Respondent Google has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

(b) At all material times, Respondent Google/Nest has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

5.

(a) At all material times, the following individuals held the positions set forth opposite their respective names and have been managers or supervisors of Respondent Google within the meaning of Section 2(11) of the Act and agents of Respondent Google within the meaning of Section 2(13) of the Act:

(b) (6), (b) (7)(C)



(b) (6), (b) (7)(C)

(b) At all material times, the following individuals held the positions set forth opposite their respective names and have been managers or supervisors of Respondent Google/Nest within the meaning of Section 2(11) of the Act and agents of Respondent Google/Nest within the meaning of Section 2(13) of the Act:

(b) (6), (b) (7)(C)

6.

At all material times since September 1, 2015, until about November 1, 2016, as to Respondent Google, and at all material times since November 17, 2015, until about November 1, 2016, as to Respondent Google/Nest, Respondents maintained the following rules and/or policies:

- (a) A rule regarding confidentiality in the "Data Classification Guidelines" and related "Data Security Policy" which prohibits employees from discussing "Employee Data" defined as information that includes "Performance Compensation & Benefits Information" and "Employment Records."
- (b) A rule regarding "Performance, Compensation, & Benefits Information" in the "Data Classification Guidelines" and related "Data Security Policy" which prohibits employees (b) (4)

(b) (4)

(b) (4)

(c) A rule regarding "Employment Records" in the "Data Classification Guidelines" and related "Data Security Policy" which prohibits employees (b) (4)

(b) (4)

(b) (4)

(b) (4)

(d) The portion of the rule in the "Google Employee Communications Policy" which states: "(b) (4)

(b) (4)

(e) The portion of the rule regarding "Outside Communication and Research" in Section IV of the "Google Code of Conduct" which states: "(b) (4)

(b) (4)

(b) (4)

(f) The portion of the rule regarding "Interacting with the Press" in the Employee Communications Policy which states: "(b) (4)

(b) (4)

(g) The portion of the rule regarding External Communications in the Employee Communications Policy which prohibits employees from discussing "perks" on social media.

7.

Respondent Google:

(a) On August 6, 2015, by its (b) (6), (b) (7)(C) through a written posting on its intranet website G+, threatened employees with unspecified acts of reprisal by instructing an employee to stop engaging in protected, concerted activities.

(b) About August 19, 2015, Respondent Google, by its (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) threatened an employee with unspecified acts of reprisal by instructing an employee to stop engaging in protected, concerted activities.

8.

Respondent Google/Nest:

(a) By its legal representative:

(i) On March 24, 2016, by email to all Respondent Google/Nest employees, threatened employees with termination and legal action for engaging in protected, concerted activities and created an impression that their concerted activities were under surveillance; and

(ii) On April 18, 2016, at an all-hands meeting broadcast to all Respondent Google/Nest employees, created the impression that their protected concerted activities were under surveillance and threatened and coerced employees by announcing a confidentiality policy that restricted employees' rights to engage in protected speech.

(b) By (b) (6), (b) (7)(C) Respondent Google's (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(i) On April 18, 2016, during an all-hands meeting which was broadcast to all Respondent Google/Nest employees, created an impression that their protected concerted activities were under surveillance and threatened and coerced employees by asking them to report other employees for engaging in protected concerted activities;

(ii) On May 6, 2016, in an email sent to all Respondent Google and Respondent Google/Nest employees, created the impression that their protected concerted activities were under surveillance and threatened and coerced employees by asking them to report other employees for engaging in protected concerted activities, threatened employees with termination for engaging in protected, concerted activities, and announced rules regarding confidentiality that restricted employees' rights to engage in protected speech.

9.

(a) On (b) (6), (b) (7)(C) 2015, Respondent Google's employee, (b) (6), (b) (7)(C) engaged in protected concerted activities for the purposes of mutual aid and protection by posting comments on Respondent Google's intranet website G+, regarding workplace diversity and social justice initiatives, workplace policy viewpoints, and regarding employees' rights to express their opinions on G+, and by sending an email to Respondent's (b) (6), (b) (7)(C) regarding these matters.

(b) About (b) (6), (b) (7)(C) 2015, Respondent Google issued a final written warning to (b) (6), (b) (7)(C)

(c) Respondent Google engaged in the conduct described above in paragraph 9(b) because (b) (6), (b) (7)(C) engaged in the conduct described above in paragraph 9(a), and to discourage employees from engaging in these or other concerted activities.

10.

By the conduct described above in paragraphs 6, 7, 8, and 9, Respondent Google has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

11.

By the conduct described above in paragraphs 6 and 8, Respondent Google/Nest has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

12.

The unfair labor practices of Respondent Google and Respondent Google/Nest described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

SPECIAL REMEDIES

WHEREFORE, as part of the remedy for violations alleged above, the General Counsel seeks an Order requiring Respondents to rescind their overly broad or otherwise unlawful policies on a nationwide basis, post a remedial Notice to Employees on a nationwide basis, and post the same Notice on Respondents' Intranet and/or electronic bulletin board, and email the Notice to employees nationwide consistent with Respondents' normal methods of communicating with employees. The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the Amended Consolidated Complaint. The answer must be **received by this office on or before November 29, 2018, or postmarked on or before November 28, 2018.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number,

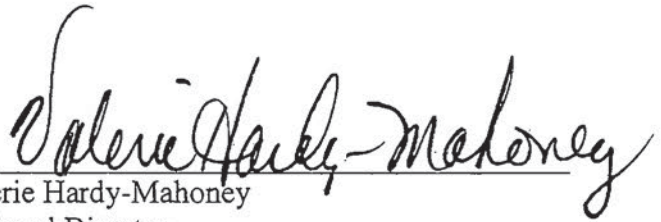
and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Amended Consolidated Complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on February 4, 2019, at 9:00 a.m., at the Oakland Regional Office, located at 1301 Clay Street, Suite 300N, in Oakland, California 94612-5224, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and

any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

DATED AT Oakland, California this 15th of November, 2018.

A handwritten signature in cursive script, reading "Valerie Hardy-Mahoney", written over a horizontal line.

Valerie Hardy-Mahoney
Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Suite 300N
Oakland, CA 94612-5224

Attachments



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570

November 19, 2018

CHRIS BAKER, ESQ.
BAKER CURTIS & SCHWARTZ P.C.
1 CALIFORNIA ST STE 1250
SAN FRANCISCO, CA 94111

Re: Google, Inc. and Nest Labs, Inc., a Single
Employer
Case 32-CA-176462

Dear Mr. Baker:

We have carefully considered your appeal from the Regional Director's decision partially to dismiss the captioned charge. Based upon our review of the evidence disclosed by the Regional Office's investigation as well as applicable case law, we have decided to deny the appeal, substantially for the reasons explained in the Regional Director's Order, dated September 28, 2018, dismissing parts of its Consolidated Complaint, dated April 29, 2017.

Your client's charge alleged that the Employer maintains a code of conduct that prohibits the exercise of section 7 rights. After issuing complaint on this allegation, the Board issued its decision in *The Boeing Company*, 365 NLRB No. 154 (Dec. 14, 2017), overruling the "reasonably construe" prong of *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004). In light of *Boeing*, the Regional Director determined that certain Employer rules that had been unlawful under *Lutheran Heritage* were now lawful and hence dismissed those related parts of the complaint. You provide no new evidence or information on appeal.

Under *Boeing*, "when evaluating a facially neutral policy, rule or handbook provision that, when reasonably interpreted, would potentially interfere with the exercise of [Section 7] rights, the Board will evaluate two things: (i) the nature and extent of the potential impact on [those] rights, and (ii) legitimate justifications associated with the rule." *Boeing*, slip op. at 4. Under this standard, a facially neutral rule is lawful if a reasonable interpretation of the rule shows that it does not interfere with employees' Section 7 rights, or the potential interference is outweighed by legitimate business justifications.

In this case, you provided no new information or evidence on appeal that calls into question the Regional Director's determination that certain of the Employer's rules are lawful. Furthermore, the Employer has already rescinded all the rules originally found to be unlawful under *Lutheran Heritage*.

Accordingly, further proceedings on the captioned charge are unwarranted.

Sincerely,

Peter Barr Robb
General Counsel



By: _____

Mark E. Arbesfeld, Director
Office of Appeals

cc: VALERIE HARDY-MAHONEY
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS
BOARD
1301 CLAY ST STE 300N
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6 Attorneys for Respondents
GOOGLE INC. AND NEST LABS, INC.
7

8
9 UNITED STATES OF AMERICA
10 BEFORE THE NATIONAL LABOR RELATIONS BOARD
11 REGION 32

12 GOOGLE, INC.

13 and

14 **(b) (6), (b) (7)(C)** an Individual

15 and

16 GOOGLE INC., AND NEST LABS, INC., A
SINGLE EMPLOYER

17 and

18 **(b) (6), (b) (7)(C)** an Individual
19
20


CASE NOS. 32-CA-164766
32-CA-176462

**ANSWER OF GOOGLE INC. AND NEST
LABS, INC. TO AMENDED
CONSOLIDATED COMPLAINT**

Google Inc. and Nest Labs, Inc. (collectively "Respondents") answer the allegations in the Amended Consolidated Complaint dated November 15, 2018, as follows:

1. (a) Admit;
- (b) Deny on the ground that the first amended charge in Case No. 32-32-CA-164766 was served on March 2, 2016;
- (c) Admit.
2. (a) Admit;
- (b) Admit;
- (c) Admit that, for the purposes of this Amended Consolidated Complaint, Respondents are a single employer. Except as expressly admitted, deny;
- (d) Admit that, for the purposes of this Amended Consolidated Complaint, Respondents are a single employer. Except as expressly admitted, deny;
- (e) Admit;
- (f) Admit;
- (g) Admit.
4. (a) Admit;
- (b) Admit.
5. (a) Admit that the following individuals held the following positions at Google during all material timeframes alleged in the Amended Consolidated Complaint as indicated below, and admit that they were supervisors within the meaning of Section 2(11) of the Act and agents of Google within the meaning of Section 2(13) of the Act:

• (b) (6), (b) (7)(C)



•

•

1 • (b) (6), (b) (7)(C)

2 •

3 Except as expressly admitted, deny;

4 (b) Admit that (b) (6), (b) (7)(C) held the position of (b) (6), (b) (7)(C)

5 (b) (6), (b) (7)(C) of Nest Labs, Inc. (b) (6), (b) (7)(C) and that (b) (6), (b) (7)(C)

6 held the position of Nest's (b) (6), (b) (7)(C)

7 during all material times alleged in the Amended Consolidated Complaint. Except as expressly
8 admitted, deny;

9 6. (a) Admit that during at least some material times during the period of
10 September 1, 2015 through November 1, 2016, Respondents maintained the "Data Classification
11 Guidelines" and "Data Security Policy." Except as expressly admitted, deny;

12 (b) Admit that during at least some material times during the period of
13 September 1, 2015 through November 1, 2016, the "Data Classification Guidelines" contained a
14 reference to "Performance, Compensation, & Benefits Information." Except as expressly
15 admitted, deny;

16 (c) Admit that during at least some material times during the period of
17 September 1, 2015 through November 1, 2016, the "Data Classification Guidelines" contained a
18 reference to "Employment Records." Except as expressly admitted, deny;

19 (d) Admit that during at least some material times during the period of
20 September 1, 2015 through November 1, 2016, Respondents maintained a "Google Employee
21 Communications Policy" that included the sentence "(b) (4)

22 (b) (4) Except as expressly
23 admitted, deny;

24 (e) Admit that during at least some material times during the period of
25 September 1, 2015 through November 1, 2016, Respondents maintained a provision titled
26 "Outside Communication and Research" in Section IV of the "Google Code of Conduct" that
27 included the sentence "(b) (4)

1 (b) (4) [REDACTED] Except as expressly admitted,
2 deny;

3 (f) Admit that during at least some material times during the period of
4 September 1, 2015 through November 1, 2016, Respondents maintained a provision titled
5 “Interacting with press” in the “Employee Communications Policy.” Except as expressly
6 admitted, deny;

7 (g) Admit that during at least some material times during the period of
8 September 1, 2015 through November 1, 2016, Respondents maintained a provision titled
9 “External Communications” in the “Employee Communications Policy.” Except as expressly
10 admitted, deny.

11 7. (a) Deny;

12 (b) Deny.

13 8. (a) (i) Deny; (ii) Deny;

14 (b) (i) Deny; (ii) Deny.

15 9. (a) Deny;

16 (b) Admit;

17 (c) Deny.

18 10. Deny.

19 11. Deny.

20 12. Deny.

21
22 **FIRST AFFIRMATIVE DEFENSE**

23 With regard to Respondents’ policies, Respondents have already modified them
24 and reissued them to the workforce. As a result, the policy-based allegations the General Counsel
25 seeks to litigate are moot, and pursuing the Amended Consolidated Complaint on those policies
26 does not serve the purposes of the Act. Paragraph 6 of the Amended Consolidated Complaint and
27 the portions of paragraphs 10 and 11 referencing paragraph 6 should therefore be dismissed. *See*
28

1 *Northwestern University*, Case No. 13-CA-157467 (Advice Memorandum, September 22, 2016);
2 *see also Jimmy Wakely Show*, 202 NLRB 620 (1973).

3 4 **SECOND AFFIRMATIVE DEFENSE**

5 The Board's decision in *Purple Communications, Inc.*, 361 NLRB No. 43 (2014),
6 should be overruled, and Board law should return to that as stated in *Register Guard*, 351 NLRB
7 1110 (2007). *See Purple Communications* at *18-61 (dissents by then-Members Johnson and
8 Miscimarra).

9 10 **THIRD AFFIRMATIVE DEFENSE**

11 The allegations in the Amended Consolidated Complaint cite only excerpts of
12 policies and fail to take into account the context of the passages cited. The Board does not read
13 rules in isolation, and context must be considered. *See, e.g., Tradesmen International*, 338 NLRB
14 460, 462 (2002).

15 16 **FOURTH AFFIRMATIVE DEFENSE**

17 Because Respondents have already modified their policies and announced the
18 modifications to the workforce, this is not a case in which special remedies are appropriate.

19 20 **FIFTH AFFIRMATIVE DEFENSE**

21 Google denies that it disciplined (b) (6), (b) (7)(C) in whole or in part for protected
22 conduct, but the same discipline would have been imposed even in the absence of protected
23 conduct. *See Wright Line*, 251 NLRB 1083 (1980), *enforced*, 662 F.2d 899 (1st Cir. 1981), *cert.*
24 *denied* 455 U.S. 989 (1982).

25 26 **SIXTH AFFIRMATIVE DEFENSE**

27 Google denies that its previous policies were overbroad, but the discipline of (b) (6), (b) (7)(C)
28 (b) (6), (b) (7)(C) was warranted by (b) (6), (b) (7)(C) misconduct, which actually interfered with Google's lawful

1 interest in maintaining an inclusive workplace for (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) that is free of unlawful
2 bias, discrimination and harassment. The discipline of (b) (6), (b) (7)(C) was also warranted by (b) (6), (b)
3 violations of other policies, such as Google's Policy Against Harassment Discrimination and
4 Retaliation, the validity of which is not at issue. *See Continental Group, Inc.*, 357 NLRB 409
5 (2011).

6 7 **SEVENTH AFFIRMATIVE DEFENSE**

8 The March 24, 2016 and May 6, 2016 emails that are alleged in the Amended
9 Consolidated Complaint, and the alleged comments during the April 18, 2016 meeting, lawfully
10 notified employees of Respondents' established practice of monitoring computers and email
11 systems for legitimate management reasons, such as preventing the theft of intellectual property
12 and trade secrets. *Purple Communications, Inc.*, 361 NLRB No. 43 (2014).

13 14 **EIGHTH AFFIRMATIVE DEFENSE**

15 If the allegations in paragraphs 7 and 9 of the Amended Consolidated Complaint
16 are adopted by the Board, the decision would interfere with Respondents' obligations under the
17 law to maintain a work environment that is free of unlawful discrimination, harassment and bias.
18 *See Google Inc.*, NLRB Div. of Advice, No. 32-CA-205351, January 16, 2018; *see also* 42
19 U.S.C. § 2000c et seq., as amended (Title VII of the Civil Rights Act of 1964); 29 CFR
20 §1604.11(d) ("[a]n employer may also be responsible for ... harassment of employees in the
21 workplace, where the employer ... knows or should have known of the conduct and fails to take
22 immediate and appropriate corrective action."); Cal. Govt Code § 12900 et seq. (California's Fair
23 Employment and Housing Act).

24
25 For all of the foregoing reasons, the Amended Consolidated Complaint should be
26 dismissed in its entirety.

1 DATED: November 29, 2018

Respectfully submitted,

2 PAUL HASTINGS LLP
3 CAMERON W. FOX
4 J. AL LATHAM
5 ANKUSH DHUPAR

6 By: 

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9 Attorneys for Respondents
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11 NEST LABS, INC.
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**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

GOOGLE, INC.

and

Case 32-CA-164766

(b) (6), (b) (7)(C), an Individual

and

**GOOGLE INC., AND NEST LABS, INC., A
SINGLE EMPLOYER**

and

Case 32-CA-176462

(b) (6), (b) (7)(C), an Individual

ORDER RESCHEDULING HEARING

Based upon good show and as agreed to by the parties, **IT IS HEREBY ORDERED** that the hearing in the above-captioned matter, currently scheduled for February 4, 2019 at the Oakland Regional Office, 1301 Clay Street, Suite 300N, Oakland, California, is now rescheduled to Monday, March 4, 2019 at 9:00 a.m. and on consecutive days thereafter until concluded.

DATED AT Oakland, California this 2nd day of January 2019.

/s/ Hokulani Valencia

Hokulani Valencia
Acting Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Suite 300N
Oakland, CA 94612-5224